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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAY 26 1992

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
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The Telephone Consumer Protection )  
Act of 1991 )

CC Docket No. 92-90

COMMENTS OF BELL ATLANTIC

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FILE

Bell Atlantic<sup>1</sup> urges the Commission to adopt its proposed rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA").<sup>2</sup> These rules carry out the intent of Congress to prevent invasions of privacy caused by telemarketing and nuisance telephone calls to the home, while at the same time not inhibiting consumer communications services involving the storage and forwarding of messages for others.<sup>3</sup>

In order to give subscribers the ability to prevent unwanted telephone solicitation, the Commission should require only that telemarketing companies maintain lists of customers who have asked not to be called. Other proposals are either impractically expensive to implement or incapable of achieving the intended purpose.

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<sup>1</sup> The Bell Atlantic telephone companies ("Bell Atlantic") are The Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac telephone companies, The Diamond State Telephone Company and New Jersey Bell Telephone Company.

<sup>2</sup> Public Law 102-243. See Notice of Proposed Rulemaking, FCC 92-176 (rel. April 17, 1992) ("NPRM").

<sup>3</sup> TCPA, § 2 and legislative history.

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**1. The Proposed Rules Recognize That Congress Intended Not To Disrupt Consumer Communications Services.**

The legislative history of the TCPA makes it clear that Congress intended to restrict unsolicited advertising and not to impede communications services which store and transmit individual customer messages.<sup>4</sup> Bell Atlantic currently offers several such services and plans others in the near future.<sup>5</sup>

The Commission recognizes the purposes of the Act, and, accordingly, the proposed rules continue to permit the use of recorded voices to make non-commercial calls and commercial calls that do not involve unsolicited advertising or that are placed to

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<sup>4</sup> Chairman Markey confirmed that TCPA is intended to restrict telemarketing calls, not personal communications:

We have made the commonplace exceptions that in fact improve communications between individuals using the modern telecommunications technologies while at the same time targeting that abusive robotic use of the technology which has become such an intrusive part of American society.

*Cong. Rec.*, Nov. 26, 1991, at H-11312.

Rep. Bryant voiced his support for the bill because of his understanding that services similar to Bell Atlantic's Coin Message Delivery Service ("CMDS") would not be affected: "Unlike the technology used by telemarketers for their random solicitations, this service is a prepaid, person-to-person communication, not all that different from a regular telephone call." *Id.* at H-11311.

Chairman Hollings expressed a similar intention in the Senate Bill. *Id.*, Nov. 27, 1991, at S-18784.

<sup>5</sup> These include services which allow the subscriber to record a message from a residential, business or coin telephone for later delivery to others; a service that delivers a stored message to the subscriber at a specified telephone number; and services which store facsimile messages for forwarding to intended recipients.

a person with whom the caller has a business relationship.<sup>6</sup> These rules will permit consumers to continue to enjoy the benefits of services such as Bell Atlantic's CMDS, which the Commission previously found to be in the public interest.<sup>7</sup>

The TCPA and the Commission's proposed rules both restrict the activities of the person who "make[s] any call" or who "initiate[s] any telephone call."<sup>8</sup> Bell Atlantic believes that this restricts the originator of the message and that it does not impose any obligations -- or possible liability<sup>9</sup> -- on the carrier or other person who simply provides the transport or storage of the message.<sup>10</sup> It would, at the very least, be inappropriate for a carrier to try to monitor and control the content of communications it carries. If, however, the Commission believes that its proposed rules are not completely clear on this point, Bell Atlantic urges it to add the following provision to section 64.1100:

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<sup>6</sup> Section 64.1100(c).

<sup>7</sup> *Bell Atlantic Telephone Companies, Petition for Waiver of CEI Requirements To Perform Technical Trials of Coin Messaging Service*, 3 FCC Rcd 5741 (1988); *Bell Atlantic Telephone Companies' Request for Waiver To Offer Coin Message Delivery Service*, 6 FCC Rcd 3400 (1991). Bell Atlantic markets CMDS under the name Send-A-Call.

<sup>8</sup> TCPA at §§ 227(b)(1)(A) and (b)(1)(B); §§ 64.1100(a)(1) and (a)(2) of the proposed Rules.

<sup>9</sup> TCPA at § 227(b)(3).

<sup>10</sup> Certain voice messaging features include introductory messages recorded by Bell Atlantic. For example, a subscriber can have Bell Atlantic call him to say that a message is waiting in his voice mailbox. The addition of such an incidental message, even if heard by a non-subscriber who answers the telephone, does not constitute the "initiation" of a call using a recorded or artificial voice under the TCPA or the Commission's proposed Rules.

(e) Any person, whether or not a carrier, who transmits, stores, processes or forwards a telephone message on behalf of or at the direction of another person shall not be considered to be initiating a telephone call or sending a message to a telephone facsimile machine under subsection (a).

Similarly, Bell Atlantic believes that the rules relating to the "sender" of a facsimile message apply only to the party originating the message, not to the provider of a storage and forwarding service.<sup>11</sup> If the Commission wants to make this explicit in its rules, Bell Atlantic suggests that it add at the end of proposed section 68.318(C)(4) the following:

Devices which are used to transmit, store or forward messages on behalf of or at the direction of other persons must send such identifying information supplied by the person initiating the message but need not add additional identifying information.

**2. The Commission Should Rely on Company Lists To Restrict Unsolicited Advertising.**

The Commission asks parties to address five possible methods of restricting live telephone solicitations.<sup>12</sup> Bell Atlantic urges the Commission to adopt a portion of one of its proposals and require that companies that perform telemarketing maintain lists of individuals who say that they do not want to be called.<sup>13</sup>

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<sup>11</sup> § 68.318(c)(4) of the proposed Rules.

<sup>12</sup> NPRM at ¶¶ 27-33.

<sup>13</sup> This would not prevent an industry association from voluntarily maintaining other sets of "do not call" lists for its members or a national telemarketing association from maintaining a database that crosses a number of industries.

The Commission should not, however, adopt the rest of that proposal and require industry-wide lists. Some customers might want to prevent calls from some firms in an industry and not others. A list which identifies customers by the individual company from which they do not want calls would be competitively sensitive and counter-productive. One company in an industry will know a competitor's list of "do not call" customers and could target those customers for preferential telemarketing.

The Commission should reject its four other proposals for the reasons discussed below.

First, as the Commission notes, the TCPA mentions the possible use of a single comprehensive national database of all residential customers.<sup>14</sup> Such a system would be expensive to maintain and more expensive to enforce.<sup>15</sup> Moreover, by providing the subscriber's name and telephone number to all telemarketers, that list would have the perverse effect of destroying the anonymity of non-published listing subscribers. Delays in listing and publishing could result in a lag of as much as six months from the time a subscriber seeks listing until that subscriber's name appears on the list.<sup>16</sup>

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<sup>14</sup> NPRM at ¶ 28. Although the TCPA provides that subscribers not be charged to support this system, the Florida database, which the Commission discusses as a model, charges subscribers who are listed.

<sup>15</sup> The Commission points out that no federal funds would be used for this database. *Id.* at ¶ 29.

<sup>16</sup> *Id.* at ¶ 28.

Second, the Commission suggests that all telemarketers be assigned the same prefix ("NXX") and that the network block calls from such numbers to subscribers who do not want to receive them.<sup>17</sup> This is not practical because the same NXX is not available for this purpose in every NPA, and this plan would make thousands of customers change their telephone numbers to clear out one or more national NXXs for this purpose.<sup>18</sup> Even if the Commission were willing to disrupt the service of these customers in this way, such a scheme could not be implemented for several years because it is dependent upon all carriers' having deployed SS7 technology (or some other means of delivering the calling party's number to the terminating customer's switch) and interconnecting their signaling networks.

The Commission's third proposal is to place a mark adjacent to the telephone directory listing of each customer who wishes not to receive solicitations.<sup>19</sup> Bell Atlantic estimates that such an arrangement would cost at least \$70 million during the first year because of the need to process a new service order for each marked listing. This arrangement would not allow the thousands of persons with non-published numbers to block

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<sup>17</sup> *Id.* at ¶ 30.

<sup>18</sup> Because no NXX is vacant in all jurisdictions, if the Commission were to require that one or more NXXs be assigned nationally to telemarketers, thousands of customers would be inconvenienced, because they would need to be assigned new telephone numbers. In addition, it is not clear that a single NXX would provide enough numbers to accommodate all telemarketers.

<sup>19</sup> NPRM at ¶ 31.

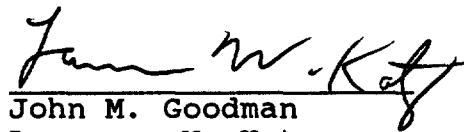
telemarketing calls, because names that do not appear in the directory could not be marked.

The Commission's final alternative is to restrict the hours of telemarketing. Bell Atlantic agrees with the Commission that the voluntary actions of the telemarketing industry and requirements of the marketplace will prevent telemarketing calls from being placed outside of reasonable hours.<sup>20</sup> Accordingly, no Commission rules are needed on the hours of permitted telemarketing, although Bell Atlantic has no objection to such rules.

Respectfully submitted,

**The Bell Atlantic Telephone  
Companies**

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<sup>20</sup> NPRM at ¶ 33.